

A Study on Marriage  
and Divorce Law of the  
Natives in Sarawak

by

HALUYAH AWI

Project paper submitted in partial  
fulfillment of Diploma in Law  
At the MARA Institute of Technology  
Shah Alam, SELANGOR.

November 1986

## CONTENTS

	<u>Page</u>
Preface	
Acknowledgement	
<u>Chapter 1 - Introduction</u>	
(A) History	1
(B) The Natives in Sarawak - The Malays	3
- The Melanaus	7
- The Ibans	11
- The Bidayuhs	15
- The Kelabits	18
- The Kayans and Kenyahs	20
- Other Tribes of Sarawak	22
<u>Chapter 2 - Marriage</u>	
(A) Malay Marriage	
1. General Concept of Marriage	24
2. Four Types of Marriage	24
a. Nikah Benar and Nikah Salah	25
b. Nyerah Diri and Ngekot	26
3. Preliminaries	31
a. Berugam	31
b. Bertenong (Pertemuan or Langkah)	33
c. Kerisit Kerenum	34
d. Jarum-jarum	37
e. Balak Pengamang	38
f. Tekol	39
g. Mereya	44
4. Substantive Marriage Requirement	
a. Age	50
b. Consent of bride	51
c. Solemnizaion of Marriage - consent of Guardian for Marriage	51
d. Capacity To Marry	53
e. Prohibited Degrees of Marriage	53
f. Maskahwin or dowry	54
5. Effect of Registration	55
(B) Iban Marriage	56
1. Concept of Adat (Custom)	56

## PREFACE

The purpose of this paper has been to study and examine some aspect of the Native Law in Sarawak pertaining to marriage and divorce among the natives.

In the first chapter of the paper which is intended to serve as a book ground to the study, the wirter has given brief description of the history of Sarawak and also the natives race.

The remaining chapter discuss the substantive features of customary marriage and divorce law practised by the natives.

Throughtout the paper observation have also been made regarding the customary practices and the writer has also not hesitated to comment on and to suggest reform whenever it is felt necessary in the existing system of the native law i.e. Customary Law.

## CHAPTER ONE

### INTRODUCTION

#### History

Sarawak is in the north-west part of the island of Borneo. It is situated just to the north of the Equator.<sup>1</sup>

The area of Sarawak is 48,250 square miles. It has a coastline of nearly 500 miles. To the north is the South China Sea. People have lived in Sarawak for a long time. Remains found in the Niah Caves indicate that men lived here over 40,000 years ago. By the Sixth Century ship started coming from distant countries to trade in Sarawak. They brought pottery beads and other manufactured goods. In return they took back product from the Sarawak forests: bird's nest, rhinoceros's horn, roatans, camphor and timber. Many of these early traders were Chinese, later they were Indians and Hindus.<sup>2</sup>

These traders were followed by Arab and Malay merchant who brought the Muslim religion to the coastal people. Sarawak came to be ruled by the Sultan of Brunei, although for a long time the name "Sarawak" was only given to the land in the west around the Sarawak River. In 1839 there was a rebellion in this area against the Sultan of Brunei. An English-

---

<sup>1</sup> Sarawak: The Land and Its People, Eaton Peter, Borneo Literature Bureau, 1974, pg. 1

<sup>2</sup> ibid

man called James Brooke visited Sarawak at this time and helped to end the rebellion.<sup>3</sup>

In return he was made Governor and Raja of Sarawak. At this time the country stretched from Tanjong Datu to the Samaranan River. The people of the country were troubled by head-hunting and piracy. With the help of the British navy, James Brooke defeated the pirates who lived around the Lupar and Saribas rivers and extended his rule to the Land of what are now the Second Division. Later his territories were extended to the Rejang River and then as far up the coast as Bintulu.<sup>4</sup>

When James Brooke died his nephew, Charles Brooke became Raja. More territory was gained for Sarawak when the people who lived in the Baram River area rebelled against the Sultan of Brunie. The Sultan was unable to control the rebellion and in 1882 gave the area to Sarawak, it form much of what is now the Fourth Division. In a similar way the Trisan and Limbang together with the Lawas region, which was obtained from the British North Borneo Company, they form the Fifth Division.<sup>5</sup>

In 1917, Vyner Brooke succeeded his father as Raja and ruled the country until 1941 when it was invaded by the Japanese. When the Japanese were defeated in 1945 the Raja felt he did not have the money and resources to rebuild and develop the country and Sarawak became

---

3   ibid

4   Supra pg. 1

5   Supra pg. 1